No. 17-71

In The

Supreme Court of the United States

WEYERHAEUSER COMPANY,

Petitioner,

v.

UNITED STATES FISH AND WILDLIFE SERVICE, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF ST. TAMMANY PARISH GOVERNMENT AS AMICUS CURIAE SUPPORTING WEYERHAEUSER PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

This matter comes before this Honorable Court on the granting of a writ application involving Weyerhaeuser Company, *Petitioner*, Markle Interests, L.L.C., P&F Lumber Company 2000, L.L.C., PF Monroe Properties, L.L.C., and United States Fish and Wildlife Service, *et al.*, *Respondents*, and Center for Biological Diversity and Gulf Restoration Network, *Intervenor-Respondents*.

The *amicus* brief in support of the writ application was filed on behalf of St. Tammany Parish Government, a local political subdivision of the State of Louisiana, governed by a Home Rule Charter form of government as authorized by Article VI of the Louisiana Constitution of 1974.

St. Tammany Parish Government has exclusive zoning jurisdiction over the subject property in this litigation, which has been designated for development as a Traditional Neighborhood Development. Adversely, the United States Fish and Wildlife Service subsequently declared the subject property as "Critical Habitat" for the gopher frog. Said declaration, if permitted to remain, will economically damage St. Tammany Parish Government and jeopardize the health, safety, and welfare of its citizens.

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[1] This brief has been authored solely by counsel for St. Tammany Parish Government and its undersigned counsel of record. No party contributed funding related to the preparation of this brief.

SUMMARY OF ARGUMENT

The underlying facts briefly stated place the federal government's authority vested in the United States Fish and Wildlife Service against that of not only private landowners but, more importantly, St. Tammany Parish Government's authority to protect the health, safety, and welfare of its citizens through its inherent local zoning authority. This is especially true when said action by the federal agency amounts to an unreasonable usurping of local authority which jeopardizes the economic development of the Parish and threatens its residents by requiring burnings to recreate a longleaf pine savanna forest in order to maintain the one thousand five hundred forty-four (1,544) acre site as a potential habitat for the gopher frog.

ARGUMENT

A. Zoning In St. Tammany Parish

St. Tammany Parish has a long and distinguished history of zoning with conservation and preservation inherent in its Code of Ordinances.

St. Tammany Parish Government's zoning authority dates back to the 1921 Louisiana State Constitution, and is the third (3rd) oldest governmental entity in the State of Louisiana to adopt zoning ordinances.

After a three (3) year process of planning and extensive public involvement, Ordinance Council Series

No. 10-2408 was adopted on December 2, 2010, which completed the comprehensive rezoning of the unincorporated areas of the Parish. The property that is the subject of the "critical habitat" designation by the U.S. Fish and Wildlife Service and which forms the basis of this litigation was included in said process and was zoned to be developed as a Traditional Neighborhood Development-2 (TND-2).

The purpose of the TND-2 designation is clearly stated in the ordinance:

> Section 5.3501A PURPOSE
>
> > The purpose of a TND-2 Traditional Neighborhood Development Zoning District ("TND District") is to encourage mixed-use, compact Development and facilitate the efficient use of services. A TND District diversifies and integrates land uses within close proximity to each other, and it provides for the daily recreational and shopping needs of the residents. A TND District is a sustainable, long-term community that provides economic opportunity and environmental and social equity for the residents. This ordinance's intent is to encourage its use by providing incentives, rather than prohibiting conventional Development.

The location of the property was a major factor in the zoning process for its being located north of U.S. Interstate 12 (I-12). Said location of a traditional neighborhood removed its future residents and businesses out

of harm's way in the inevitable event of the devastating effects from hurricanes and flooding.

Its history of preservation and conservation includes its support of the creation and zoning of the Big Branch National Wildlife Refuge in 1994, which now includes eighteen thousand (18,000) acres of pristine wetlands, cypress swamps, and longleaf savanna pine forest located along Bayou Lacombe and the shores of Lake Pontchartrain north of the City of New Orleans.

In 2004, the Parish with the utilization of its zoning ordinances acquired a thirty-two (32) mile abandoned railroad corridor connecting all major cities and communities in the Parish while providing transportation corridors for pedestrians and bicyclists to access the communities. The corridor contains a variety of hardwoods and cypress swamps which will forever be preserved. An important feature was the banking of a portion of said corridor for high-speed rail.

More recently, it purchased over one thousand four hundred forty-two (1,442) acres of undeveloped wetlands, mixed hardwoods, and longleaf Savanna pines in the Mandeville area, which currently serves the dual purpose of acting as drainage basins while preserving those areas for additional recreation and wildlife management. An application has already been submitted for a portion of the said property to be federally designated as a wetlands mitigation bank.

Why is this history important? It is to show the commitment of the Parish to the preservation of its environment, history and local communities while at the

same time looking forward to the future and preparing for it.

St. Tammany Parish recognizes that after Hurricane Katrina and the devastation of New Orleans, the Parishes of St. Bernard, Plaquemines, and Jefferson, we are just one more major hurricane away from an overnight influx of another thirty thousand (30,000) to fifty thousand (50,000) residents fleeing to the high ground of the northern part of the Parish inclusive of the property at issue. We must be prepared with developments such as the one to be built on the land at the center of this controversy.

Not only must the development's infrastructure be ready but also the school systems, police and fire districts, and hospital service districts must be prepared.

Zoning based upon smart growth principles is the foundation of St. Tammany Parish but it is now threatened by the excessive intrusion of the federal government. The federal government is trying to put a square peg in a round hole. It can only be accomplished if the federal carpenter (feds) makes it round. President Grover Cleveland noted: "A government for the people must depend for its success on the intelligence, the morality, the justice, and the interest of the people themselves."

B. Economic Impact

Important issues that were not taken into consideration by the United States Fish and Wildlife Service

are the adverse economic impact on the Parish and the current and future development of the corridor containing the subject property.

The construction of a new four (4) lane Highway 3241, which has been in the planning and funding stages for over twenty-five (25) years, is now a reality with the acquisition of the necessary right of ways. This critical transportation corridor located off of U.S. Interstate 12 (I-12) in Lacombe, Louisiana, will traverse the section of the Parish almost touching the subject property as indicated by the attached map. App. 1.

This will be a critical artery not only in the economic development of the high ground of the northern part of the Parish but also in the evacuation of its citizens and those of the New Orleans area during declared hurricanes.

A review of the attached map reflects the location of three (3) major highways within the Parish's transportation system along with the designated route of Highway 3241. The U.S. Interstate 12 (I-12) and Highway 36 provide east-west traffic flow while Highway 434 and the new Highway 3241 provide north-south flow. Highway 3241 will provide the fastest and most direct route north to the much higher ground of Washington Parish in the event of a hurricane and out of the way of any potential storm surge. These arteries provide an essential part of the routes utilized during evacuation. Traffic flows on such arteries in one (1) direction only, which is commonly called contraflow, is

critical to saving lives with its U.S. Interstate 12 (I-12) connection to the Lake Pontchartrain Causeway and the many residents in the Parishes surrounding St. Tammany.

The Highway 434 corridor is now developed with a new Northshore Community College, a new 911 emergency center, planned governmental complex, hospital, Social Security office, and industrial and residential areas. The further development of said corridor would not be conducive if the habitat designation remains, especially with its required burning.

St. Tammany Parish Government has a diverse funding structure which includes property taxes, impact fees, sales and use taxes, and parcel fees. This tax base must provide funding for the Parish's Judicial and Criminal Justice System, jail, school systems, fire protection districts, public recreation facilities, roads and drainage, public health, hospitals, and care of our elderly and mentally ill.

An average homeowner pays a percentage of the value of their property in taxes per year to support these services. Commercial and industrial structures pay a greater amount per year. However, some pay little or nothing due to their economic situation or status through homestead or use exemptions. Agricultural land, such as the property *sub judice*, currently carries a tax exemption from which the Parish receives nothing except a severance tax when the loblolly pines are harvested.

Although the Parish was maintaining its needs prior to Katrina, it has suffered due to the influx of over thirty thousand (30,000) residents in a short period fleeing to higher ground. It is still recovering.

The non-development of the subject property due to the restrictions that are mandated by the "Critical Habitat" designation is not an economically viable option and was one of the reasons the Parish opposed the designation when it adopted Resolution Council Series No. C-3274 attached hereto as an exhibit. App. 2.

None of these factors were considered by the United States Fish and Wildlife Service in weighing the potential negative economic impact on the Parish or on the safety of the citizens versus the possible relocation of a species of frog that has been non-existent in the designated property for over fifty (50) years.

C. Environmental Impact

The one irrefutable fact in the review is that for the habitat to exist again, the loblolly forest currently on the property *must* be removed and new longleaf pines planted.

Longleaf pines take one hundred (100) to one hundred fifty (150) years to grow to maturity. The burning of underbrush promotes the growth of the longleaf by eliminating other vegetation which may grow higher thereby denying sunlight needed for it to grow.

The burning itself creates not only an environmental and health hazard to the neighboring citizenry

from the thick smoke but safety issues on the nearby transportation corridors, including the new 3241 four (4) lane highway which will practically abut the subject property. The question must be asked if anyone would want to live near such a site other than the gopher frog?

Clearly, the answer is a resounding "No!"

For many years, the preservation of the longleaf pine savanna has created public health and safety issues for the citizens of St. Tammany through the burning of the properties containing same. As an example, a catastrophic wreck with injuries occurred on U.S. Interstate 12 (I-12) in Lacombe, Louisiana, in the early 1990s involving over fifteen (15) vehicles where the smoke was so thick from the burning of the longleaf pine savanna that the responding fire and rescue vehicles had to be led to the victims by rescue workers walking in front of their vehicles guiding the way.

This must never happen again, where the lives of the citizens of St. Tammany are put in jeopardy to potentially save a *non-existent* gopher frog, which currently lives in Mississippi.

CONCLUSION

Regrettably, even if the poor gopher frog is transported to the subject property, it cannot be saved even by the kiss of a beautiful princess as its habitat has been non-existent for over fifty (50) years and cannot

be recreated except by inflicting environmental and safety hazards on St. Tammany Parish and its citizens.

The United States Fish and Wildlife Service's overreaching and intrusive interference in the judicially recognized zoning authority of local governments must not be permitted, and the United States Fish and Wildlife Service's action must be reversed.

Respectfully submitted,

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